



October 19, 2011

Bonnie D. Shealy

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

PH

(803) 779-8900 | (803) 227-1102 *direct*

FAX

(803) 744-1551

bshealy@robinsonlaw.com

VIA ELECTRONIC FILING

Jocelyn Boyd, Chief Clerk/Administrator
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

**Re: Joint Application of DSLnet Communications and DIECA
Communications for Authority to Complete Intra-corporate
Transactions
Docket no. 2011-387-C**

Dear Jocelyn:

Enclosed for filing please find the Verified Testimony of Douglas Carlen on behalf of DSL.net Communications, LLC and DIECA Communications, Inc., dba Covad Communications in the above-referenced docket. We are providing the S.C. Office of Regulatory Staff with a copy of the testimony by copy of this letter. Should you have any questions, please contact me.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie D. Shealy

/bds
Enclosure

cc/enc: Lessie Hammonds, ORS Staff Attorney (via email & U.S. Mail)
Katherine K. Mudge, Director-State Affairs & ILEC Relations (via email)

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA**

Joint Application of	:	
	:	
DSLnet Communications, LLC,	:	Docket No. <u>2011-387-C</u>
and	:	
DIECA Communications, Inc.	:	
	:	
For Authority to Complete Certain <i>Pro</i>	:	
<i>Forma</i> Intra-Corporate Transactions	:	

**VERIFIED TESTIMONY OF

DOUGLAS CARLEN

ON BEHALF OF DSLnet COMMUNICATIONS, LLC
AND
DIECA COMMUNICATIONS, INC.**

1 **Q. Please state your name, title and business address for the record.**

2 **A.** My name is Douglas Carlen. I am General Counsel and Secretary of MegaPath Inc.
3 (“MegaPath”), DSLnet Communications, LLC (“DSLnet”), DSLnet Communications
4 VA, Inc., (“DSLnet-VA”), Covad Communications Company (“CCC”), and DIECA
5 Communications, Inc. (“DIECA”). I am authorized to provide this testimony on behalf
6 of DSLnet and DIECA (collectively, the “Applicants”).

7 **Q. What are your responsibilities as General Counsel and Secretary?**

8 **A.** I oversee the legal, corporate, regulatory and legislative affairs of the Applicants.

9 **Q. Are you familiar with the application submitted to the Commission?**

10 **A.** Yes.

11 **Q. What authority is requested by the Joint Application?**

12 **A.** The authority requested is approval, to the extent it may be required, for DSLnet to merge
13 into DIECA, and the Applicants’ unregulated affiliates, DSLnet-VA, MegaPath, and
14 CCC (DIECA, DSLnet, DSLnet-VA, CCC and MegaPath, collectively, the “MegaPath
15 Group”) to merge into DIECA with DIECA surviving (the “Transactions”). In the
16 alternative, the Applicants may decide to undertake the Transactions as asset transfers
17 rather than mergers, and as such, requests authority to undertake the Transactions in that
18 manner as well, as applicable.

19 **Q. Do you intend to incorporate by reference any documents into your testimony?**

20 **A.** Yes, I wish to incorporate by reference the underlying application filed in this proceeding
21 and its associated exhibits.

1 **Q. Generally, what are the terms of the Transactions?**

2 **A.** The Transactions are being undertaken merely as an internal *pro forma* reorganization of
3 the companies into DIECA in order to streamline operations under a single “MegaPath”
4 branded company combining the individual operations of the various affiliated entities.
5 As a result of the Transfer, DSLnet’s, DSLnet-VA’s, MegaPath’s, and CCC’s customers
6 and the assets to support the provision of services to those customers will be transferred
7 to DIECA, which will become the service provider for those customers. As described
8 below, because the rates, terms or conditions of the services being received by customers
9 will not change as a result of the assignment, the proposed Transactions will be virtually
10 transparent to customers of DSLnet in terms of the services that those customers receive.
11 Since DIECA already holds a certificate of public convenience and necessity
12 (“Certificate”), the Certificate of DSLnet is not being transferred to DIECA.

13 **Q. Tell us about the parties.**

14 **A. MegaPath, Inc. and DSLnet Communications, LLC**

15 MegaPath Inc. is a Delaware corporation, and is the parent company of DSLnet
16 Communications, LLC. MegaPath Inc. is a wholly-owned subsidiary of CCGI Holding
17 Corporation. MegaPath is a provider of a variety of managed Internet Protocol (“IP”)
18 services including cable and satellite system broadband Internet access, mobility services
19 such as digital certificates, global remote access, personal firewalls, and remote access
20 virtual private networks (“VPN”), and security services. MegaPath does not currently
21 offer any regulated telecommunications services and therefore does not hold any
22 telecommunications authorizations from the Federal Communications Commission
23 (“FCC”) or any state regulatory authority.

1 DSLnet Communications, LLC is a Delaware limited liability company. DSLnet provides
2 high-speed Internet access services. DSLnet is authorized to provide intrastate
3 telecommunications services in forty-seven (47) states and the District of Columbia, and
4 DSLnet's affiliate DSLnet Communications VA, Inc. is authorized to provide intrastate
5 telecommunications services in Virginia. In South Carolina, DSLnet is authorized to
6 provide local and long distance telecommunications services pursuant to Order No. 1999-
7 365 issued by the Commission in Docket No. 1999-081-C on May 26, 1999. DSLnet is
8 also authorized by the FCC to provide international and domestic interstate
9 telecommunications services as a non-dominant carrier.

10 **Covad Communications Company and DIECA Communications, Inc.**

11 Covad Communications Group, Inc. ("Covad") is a Delaware corporation that owns
12 Covad Communications Company ("CCC"), a California corporation, and DIECA
13 Communications, Inc. ("DIECA"), a Virginia corporation. Covad is a wholly-owned
14 subsidiary of CCGI Holding Corporation. Covad is a leading nationwide provider of
15 integrated voice and data communications. Through its operating companies (CCC and
16 DIECA), the company offers DSL, Voice Over IP, T1, Ethernet, Web hosting, managed
17 security, IP and dial-up, wireless broadband, and bundled voice and data services directly
18 through Covad's network and through Internet Service Providers, value-added resellers,
19 telecommunications carriers and affinity groups to small and medium-sized businesses
20 and home users. Covad broadband services are currently available across the nation in 44
21 states and 235 Metropolitan Statistical Areas ("MSAs") and can be purchased by more
22 than 57 million homes and businesses, which represent over 50 percent of all US homes
23 and businesses.

1 In South Carolina, DIECA is authorized to provide local exchange and interexchange
2 services pursuant to Order No. 2000-0513 issued by the Commission in Docket No.
3 2000-0133-C on June 20, 2000. DIECA is also authorized by the FCC to provide
4 international and domestic interstate telecommunications services as a non-dominant
5 carrier. CCC does not currently offer any regulated telecommunications services in South
6 Carolina and therefore does not hold any telecommunications authorizations from the
7 Commission.

8 **Q. How will the present customers of MegaPath, DSLnet, DSLnet-VA and CCC be**
9 **affected?**

10 **A.** Although the proposed Transactions will involve a transfer of customers, immediately
11 following the proposed Transactions, all of those customers will continue to receive
12 service from DIECA under the same rates, terms and conditions as the services currently
13 provided. As a result, the proposed Transactions will be almost seamless and virtually
14 transparent to customers served by MegaPath, CCC, DSLnet and DSLnet-VA in terms of
15 the services that they currently receive. DSLnet does not currently provide intrastate
16 telecommunications services to its South Carolina customers, but rather provides most of
17 its jurisdictionally interstate services under contract. As such, Applicants do not believe
18 that the Commission's slamming rules are applicable with respect to the Transactions.
19 Nonetheless, the parties have already begun to inform customers of the pending change
20 pursuant to their contractual notification requirements. Moreover, because DIECA is
21 acquiring all of the assets of MegaPath, DSLnet, DSLnet-VA and CCC necessary to
22 provide service to the transferred customers, DIECA will have all of the assets required
23 to continue to provide high-quality services to the customers it acquires.

1 **Q. Is DIECA qualified to become the ultimate owner of MegaPath, DSLnet, DSLnet-**
2 **VA and CCC?**

3 **A.** Yes. DIECA is well-qualified to provide service to MegaPath, DSLnet and CCC
4 customers. DIECA is certificated to provide local and long distances telecommunications
5 services and provides voice and data services (identical to those provided by CCC) in 37
6 states and the District of Columbia. DIECA's operations will continue to be overseen by
7 the same well-qualified management team with substantial telecommunications
8 experience and technical expertise.

9 **Q. Does DIECA have the financial resources to serve the customers previously served**
10 **by DSLnet?**

11 **A.** Yes. DIECA has more than sufficient resources to ensure its successful ongoing
12 operations.

13 **Q. When are the Transactions expected to be consummated?**

14 **A.** Applicants request that the Commission process this Application on an expedited basis.
15 Expedited treatment is warranted so that the Applicants may undertake the Transactions
16 as quickly as possible and to minimize the possibility of customer disruption and
17 confusion. In order to manage the merger and movement of customers on a corporate-
18 wide basis and to ensure that customer service is not impacted during this transition, it is
19 important that the transfer of South Carolina customers take place on as uniform a
20 schedule as possible throughout DSLnet's nearly nationwide service territory. For tax
21 and administrative purposes, the Applicants expect to close the Transactions on or about
22 December 31, 2011.

1 **Q. Will DSLnet continue to operate pursuant to its certificate and tariffs once the**
2 **transfer is consummated?**

3 A. Once the transactions are completed, DSLnet will notify the Commission and request that
4 its certificate and tariffs be cancelled. As a result of the proposed transactions, DIECA
5 will replace DSLnet as the service provider in South Carolina. DIECA will revise its
6 South Carolina tariff to incorporate the terms and conditions of service included in
7 DSLnet's tariff to the extent required.

8 **Q. Does this transaction involve any customers who use prepaid debit card services?**

9 A. No. The transaction only involves interstate Internet access service customers. As
10 discussed above, DSLnet does not currently provide local exchange or interexchange
11 services to its customers.

12 **Q. Are the proposed Transactions in the public interest?**

13 A. The proposed Transactions described above will serve the public interest by ensuring that
14 the assigned customers enjoy continuity of high-quality services. In particular, the
15 assignment of MegaPath's, CCC's, DSLnet's and DSLnet-VA's customers, together with
16 the transfer of other assets required to serve those customers, will ensure that the
17 customers continue to receive uninterrupted services. The customers will be served by a
18 carrier with significant technical, managerial and financial resources. The Transactions
19 are intended to streamline the operations of the companies, and thereby create operational
20 efficiencies.

21 **Q. Will the Transactions be seamless to subscribers?**

22 A. Yes. As I stated previously, all of those customers will continue to receive service from
23 DIECA under the same rates, terms and conditions as the services currently provided. As

1 a result, the proposed Transactions will be almost seamless and virtually transparent to
2 customers served by MegaPath, CCC, and DSLnet in terms of the services that they
3 currently receive.

4 **Q. How will the Transactions affect competition?**

5 **A.** Applicants do not anticipate that the transaction will result in harm to competition in any
6 relevant market. In addition, given the increasingly competitive nature of the
7 communications market, we are seeking to complete the transaction as soon as possible in
8 order to ensure that customers and Applicants can rapidly obtain the benefits that will be
9 generated by the combined companies. We believe that this transaction will enhance
10 competition because it will strengthen the certificated entities and enable the DIECA to
11 expand or strengthen its competitive efforts in areas outside their existing service
12 territories. Applicants emphasize that the transaction will not have a negative impact on
13 current MegaPath, DSLnet or CCC customers.

14 **Q. Does this complete your testimony at this time?**

15 **A.** Yes, it does.

VERIFICATION

I, Douglas Carlen, first being duly sworn upon oath, depose and say that I am authorized to represent DSLnet Communications, LLC and DIECA Communications, Inc.; that I have read the above pre-filed testimony and know the contents; that the contents are true and correct to the best of my knowledge and belief.

DSLnet Communications, LLC and
DIECA Communications, Inc.

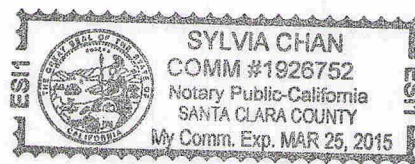
Douglas Carlen, General Counsel and Secretary

Subscribed and sworn to before me this

7 day of Oct, 2011.

Notary Public for Santa Clara, CA.

My Commission Expires: Mar 25 2015



**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2011-387-C**

In Re:

Joint Application of

DSLnet Communications, LLC,
And DIECA Communications, Inc.

For Authority to Complete Certain
Pro Forma Intra-Corporate
Transactions

CERTIFICATE OF SERVICE

This is to certify that I, Toni C. Hawkins, a Paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Verified Testimony of Douglas Carlen** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

C. Lessie Hammonds, ORS Staff Attorney
SC Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

Dated at Columbia, South Carolina this 19th day of October, 2011.



Toni C. Hawkins